

January 2, 2002

Mr. Qayyum M. Khan  
Chief Stormwater Engineer  
Department of Public Works and Environmental Services  
Environmental and Facilities Review Division  
12055 Government Center Parkway, Suite 530  
Fairfax, Virginia 22035-5503

Dear Mr. Khan:

I am writing in response to your request of December 18, 2001 for a Department interpretation as to what types of structures or facilities are included under the term “appurtenant structures” as applied to cellular facilities. Specifically, you ask whether an equipment enclosure and access road would be considered as appurtenant structures to a cellular facility. The entire project is located within a major floodplain and Resource Protection Area. The cellular facility itself will be located on an existing power tower, and the consultant for the project is contending that the cellular facility and its appurtenant structures would be exempted from the County’s Bay Act requirements (under Chapter 118, Article 5, Section 118-5-2).

Section 118-5-2 corresponds to § 9 VAC 10-20-150.B of the Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations). This section provides for the exemption of electric, gas and telephone transmission lines, railroads and public roads as long as they are designed and constructed in accordance with the Erosion and Sediment Control Law and with Chapter 104 of the Fairfax County code. Water lines, and storm or sanitary sewer lines are also exempted under the Regulations and Fairfax County’s Bay Act ordinance provided these are located as much as possible outside of the RPA, that no more land is disturbed than necessary and that water quality is protected.

Cellular facilities are not among those types of facilities mentioned in this section of the Regulations or Fairfax County’s Bay Act ordinance. The exemptions mentioned above focus on the types of public facilities that are intrinsically linear in nature, and therefore they often must cross into, through or out of RPAs. A cellular facility, whether it is a tower or a facility attached to an existing structure, is not considered under this exemption because it

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does not need to be located in an RPA, nor does it have any transmission lines that must be located through an RPA. The cellular facility, the equipment enclosure and the access road are not considered as exempted facilities under § 9 VAC 10-20-150.B of the Regulations or under § 118-5-2 of Fairfax County's Bay Act ordinance. Therefore, the equipment enclosure or access road are not appurtenant structures and should be considered as accessory structures and not permitted by right within the RPA.

I hope this clarifies this issue for the County. Should you need further clarification or if I can be of further assistance, please call me at 1-800-243-7229.

Sincerely,

Shawn E. Smith

C: Martha Little, Chief of Environmental Planning  
John Freidman